

ESTTA Tracking number: **ESTTA1110566**

Filing date: **01/27/2021**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	MuseCY SM Ltd.
Granted to Date of previous extension	01/30/2021
Address	SPYROU KYPRIANOU, 84 4004 LIMASSOL, 0 CYPRUS
Attorney information	ANTHONY R BERMAN BERMAN ENTERTAINMENT AND TECHNOLOGY LAW 600 CALIFORNIA STREET 11TH FLOOR SAN FRANCISCO, CA 94108 UNITED STATES Primary Email: tony@beat-law.com 4158169623
Docket Number	

Applicant Information

Application No.	88806454	Publication date	12/01/2020
Opposition Filing Date	01/27/2021	Opposition Period Ends	01/30/2021
International Registration No.	NONE	International Registration Date	NONE
Applicant	Cantab Risk Research Limited 33-35 VICTORIA ROAD CAMBRIDGE, CB43BW UNITED KINGDOM		

Goods/Services Affected by Opposition

Class 009. First Use: 0 First Use In Commerce: 0

All goods and services in the class are opposed, namely: Downloadable and recorded computer software for quantifying the gains and losses from potential risks to an organization, and likelihood of occurrence of gains and losses, for use in risk management by organizations and downloadable computer software applications for quantifying the gains and losses from potential risks to an organization, and likelihood of occurrence of gains and losses, for use in risk management by organizations; downloadable and recorded computer software for business risk management and downloadable computer software applications for business risk management; downloadable and recorded computer software platforms enabling users to create a secure environment to calculate, analyse and report on business risk; data processing equipment

Class 042. First Use: 0 First Use In Commerce: 0

All goods and services in the class are opposed, namely: Design and development of computer software solutions and computer programs; design and development of computer software solutions and computer programs for business risk management; software-as-a-service (SAAS) services, namely, software enabling users to create a secure environment to calculate, analyse and report on business risk; technical support and advisory services relating to computer software and applications; technical data analysis services relating to business risk management in the nature of software-based analysis of data to identify liabilities and methods of mitigation thereof; technical data analysis services relating to quantification of the gains and losses from potential risks to an organization, and likelihood of occurrence of gains and losses, for use in risk management by organizations; installation and maintenance of computer software and computer programmes; deployment of risk management computer software in the nature of installation of computer software; configuration of computer software and computer programs to enable users to create a secure environment to calculate, analyse and report on business risk; research and consultancy services relating to risk management computer software and design and development of computer hardware; information, advisory and consultancy services in relation to all the aforesaid services

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act Section 2(d)
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Mark Cited by Opposer as Basis for Opposition

U.S. Registration No.	2919070	Application Date	01/16/2004
Registration Date	01/18/2005	Foreign Priority Date	NONE
Word Mark	AUDACITY		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 009. First use: First Use: 2000/05/28 First Use In Commerce: 2000/05/28 Downloadable computer software for creating, recording, editing, analyzing, and mixing digital audio and music		

Attachments	Notice of Opposition re 88806454.pdf(614136 bytes) Reg Cert 2919070.pdf(360029 bytes)
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Signature	/Tony Berman/
Name	ANTHONY R BERMAN
Date	01/27/2021

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

MuseCY SM Ltd. <div style="text-align: right;">Opposer,</div> <div style="text-align: center;">v.</div> Cantab Risk Research, Ltd. <div style="text-align: right;">Applicant.</div>	Opposition No. _____ Mark: AUDACITY.PLUS Filed: February 21, 2020 Published: December 1, 2020 Application No. 88/806,454
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NOTICE OF OPPOSITION

MuseCY SM Ltd. (“Opposer”), a corporation organized under the laws of Cyprus, having an address at Spyrou Kyprianou, 84 4004, Limassol, CYPRUS, believes that it will be damaged by registration of the mark shown in the above-identified application for the goods and services in International Classes 9 and 42, and U.S. Classes 21, 23, 26, 36, 38, 100, and 101, and hereby opposes the same.

The grounds for opposition are as follows:

Background on the Parties

A. Opposer and the Origins of Opposer’s Mark

1. Opposer is the owner and operator of an entity using the trademark “AUDACITY” (“Opposer’s Mark”). Opposer acquired registration of Opposer’s Mark on December 1, 2020 from the original owner Dominic Mazzoni. (See Assignment Document attached as Exhibit A).
2. AUDACITY is a free, open-source, cross-platform audio recording software program. It is an easy-to-use, multi-track audio editor and recorder for Windows, macOS, GNU/Linux and other operating systems.
3. The platform was developed by a group of volunteers as open source. There have been almost 100,000,000 downloads of the software since it was launched. It has many features that are similar to well-known Digital Audio Workstations (DAW), but it is free and open-source, allowing a wide range of users to be able to access and use it.
4. Audacity can record live audio through a microphone or mixer or digitize recordings from other media. Audacity can also capture streaming audio. It can create multi-track

recordings in a fashion similar to other Digital Audio Workstations (DAW) at a quality and fidelity similar to applications that cost hundreds of dollars.

5. Audacity includes a wide-range of audio effects that allow users to create the highest-quality recordings. These effects allow for a wide range of users to take advantage of the recording capabilities of Audacity, from musicians recording their next album to medical doctors creating technology to analyze cardio echograms. The recorded audio can be enhanced, analyzed and manipulated for the users' needs

6. Audacity allows users to import sound files, edit them, and combine them with other files or new recordings. They can export recordings in many different file formats, which makes Audacity compatible with every DAW and podcast creator in the world.

B. Applicant's Mark

7. Cantab Risk Research Ltd. ("Applicant") filed based on Section 44(e) Application No. 88/806,454 to register the mark AUDACITY.PLUS ("Applicant's Mark") on the Principal Register of the United States Patent and Trademark Office on February 21, 2020, covering the following goods and services ("Applicant's Services"):

"Downloadable and recorded computer software for quantifying the gains and losses from potential risks to an organization, and likelihood of occurrence of gains and losses, for use in risk management by organizations and downloadable computer software applications for quantifying the gains and losses from potential risks to an organization, and likelihood of occurrence of gains and losses, for use in risk management by organizations; downloadable and recorded computer software for business risk management and downloadable computer software applications for business risk management; downloadable and recorded computer software platforms enabling users to create a secure environment to calculate, analyse and report on business risk; data processing equipment" in International Class 009 and U.S. Classes 021, 023, 026, 036, and 038.

"Design and development of computer software solutions and computer programs; design and development of computer software solutions and computer programs for business risk management; software-as-a-service (SAAS) services, namely, software enabling users to create a secure environment to calculate, analyse and report on business risk; technical support and advisory services relating to computer software and applications; technical data analysis services relating to business risk management in the nature of software-based analysis of data to identify liabilities and methods of mitigation thereof; technical data analysis services relating to quantification of the gains and losses from potential risks to an organization, and likelihood of occurrence of gains and losses, for use in risk management by organizations; installation and maintenance of computer software and computer programmes; deployment of risk management computer software in the nature of installation of computer software; configuration of computer software and computer programs to enable users to create a secure environment to calculate, analyse and report on business risk; research and consultancy services relating to risk

management computer software and design and development of computer hardware; information, advisory and consultancy services in relation to all the aforesaid services” in International Class 042 and U.S. Classes 100 and 101.

The date of priority is as early as September 26, 2019, which is the date when Applicant filed an application for registration of Applicant’s Mark in the United Kingdom.

Applicant’s Application was published for opposition on December 1, 2020.

8. Upon information and belief, Applicant has not commenced use in interstate commerce of Applicant’s Mark in connection with any of its covered services in International Classes 9 or 42, or U.S. Classes 21, 23, 26, 36, 38, 100, and 101.

Prosecution in the United States Patent and Trademark Office

9. Opposer has priority based on its prior use in commerce of Opposer’s Mark in connection with Opposer’s goods and services as early as May 2000. Such use was well before Applicant’s filing date of Application No. 88/806,454. Furthermore, Opposer’s Mark was used in commerce before any date of first use that the Applicant may establish in connection with Applicant’s Mark.

Specific Grounds Alleged for Opposition

10. Opposer’s Mark, Registration No. 2919070, was issued prior to Applicant’s application filing date and priority date. Therefore, there is no question that Opposer has priority of rights.

11. Applicant’s Mark is confusingly similar to Opposer’s registered AUDACITY® Mark and AUDACITY trade name. Applicant’s Mark incorporates as a primary element AUDACITY, which is confusingly similar in sound, appearance, and commercial impression to Opposer’s AUDACITY® Mark. Note that the only difference is Applicant’s addition of the generic top-level domain “.PLUS” in Applicant’s Mark, which is customarily disregarded in the likelihood of confusion analysis because it does not change the commercial impression of the mark. In addition, use of the generic top-level domain “.PLUS” is unlikely to dispel confusion because many consumers are apt to believe that AUDACITY.PLUS is a good or service offered by Opposer in connection with its long, extensive, and continuous use of the AUDACITY® Mark and AUDACITY trade name for its goods and services.

12. Applicant’s Mark is confusingly similar to Opposer’s Mark and will be used on and in connection with goods and services that are similar or related to goods and services for which Opposer has used its trademark. Applicant’s use and intent to use the mark AUDACITY.PLUS is likely to cause consumers to mistakenly believe that Applicant’s goods and services are related to Opposer or Opposer’s AUDACITY® Mark, or that such goods and services originate from, or are sponsored/approved by Opposer (or vice versa). This consumer confusion is likely to cause injury to Opposer.

13. As the result of the foregoing, Opposer holds rights in the term AUDACITY® and

variations thereof which are superior to any alleged rights of Applicant with respect to Applicant's goods and services.

14. Upon information and belief, Applicant's Mark will be used in connection with goods and services for users that are within the same group of consumers targeted by Opposer.

15. Opposer asserts that the goods and services to be offered by Applicant in connection with Applicant's Mark are related to some of the goods and services offered by Opposer in connection with which Opposer's AUDACITY® Mark has been used prior to the use of Applicant's Mark. Upon information and belief, Applicant's Goods and Services will be offered through overlapping channels to overlapping classes of customers in conditions that do not demand lengthy examination, strict scrutiny, and a long period of deliberation. Moreover, to the extent that Applicant's and Opposer's goods and services do not already overlap, Applicant's goods and services are within Opposer's zone of natural expansion.

16. Opposer has not given Applicant permission or approval to use the mark AUDACITY.PLUS, or to include the word AUDACITY® (in whole or in part) in any mark.

17. If Applicant is awarded a registration for the mark AUDACITY.PLUS in connection with Applicant's goods and services, Applicant would be entitled to the presumptions of ownership established by such registration, resulting in the injury of Opposer.

18. If Applicant is granted a registration for Applicant's Mark in International Classes 9 and 42, and U.S. Classes 21, 23, 26, 36, 38, 100, and 101, the relevant public is likely to be confused as to the source of the goods and services, which deprives Opposer of control over its own reputation and is likely to damage and injure Opposer.

19. Accordingly, registration for the mark applied for under Serial No. 88/806,454 should be refused under the provisions of Section 2(d) of the Lanham Act.

WHEREFORE, Opposer asks that this Opposition be sustained, and that Applicant's Application opposed herein be denied in International Classes 9 and 42, and U.S. Classes 21, 23, 26, 36, 38, 100, and 101.

Respectfully submitted,

Dated: January 27, 2021

By: /Tony Berman/
Tony Berman

Berman Entertainment
and Technology Law
600 California Street,
11th Floor
San Francisco,
California 94108
tony@beat-law.com
Attorney for Opposer

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the attached Notice of Opposition was served on the Attorney for Applicant on the date listed below via email:

STEVE ZEMANICK
Four Reasons Legal
8074 E 34TH Ave
Denver, CO 80238
steve@fourreasonslegal.com

Dated: January 27, 2021

By: /Tony Berman/
Tony Berman

NOTICE OF OPPOSITION

EXHIBIT A

TRADEMARK ASSIGNMENT

Whereas Dominic Mazzoni, 1210 Walleye Cmn Fremont CA 94536, has adopted, used and is using the mark AUDACITY with the USPTO Registration Number 2919070 (the "Mark") as shown in Exhibit A; and

Whereas MUSECY SM LTD, Spyrou Kyprianou, 84 4004, Limassol, Cyprus, is desirous of acquiring the Mark;

Now, therefore, for One Dollar (\$1.00) and other good and valuable consideration, receipt of which is hereby acknowledged, said Dominic Mazzoni does hereby assign unto the said MUSECY SM LTD all right, title and interest in and to the Mark, together with the good will of the business symbolized by the Mark.

Dominic Mazzoni 12/1/2020
Dominic Mazzoni

Exhibit A:

Word Mark	AUDACITY
Goods and Services	IC 009. US 021 023 026 036 038. G & S: Downloadable computer software for creating, recording, editing, analyzing, and mixing digital audio and music. FIRST USE: 20000528. FIRST USE IN COMMERCE: 20000528
Standard Characters Claimed	
Mark Drawing Code	(4) STANDARD CHARACTER MARK
Serial Number	78352743
Filing Date	January 16, 2004
Current Basis	1A
Original Filing Basis	1A
Published for Opposition	October 26, 2004
Registration Number	2919070
Registration Date	January 18, 2005
Owner	(REGISTRANT) Mazzoni, Dominic M INDIVIDUAL UNITED STATES 1210 Walleye Cmn Fremont CALIFORNIA 94536
Type of Mark	TRADEMARK
Register	PRINCIPAL
Affidavit Text	SECT 15. SECT 8 (6-YR). SECTION 8(10-YR) 20150514.
Renewal	1ST RENEWAL 20150514
Live/Dead Indicator	LIVE

Int. Cl.: 9

Prior U.S. Cls.: 21, 23, 26, 36 and 38

Reg. No. 2,919,070

United States Patent and Trademark Office

Registered Jan. 18, 2005

**TRADEMARK
PRINCIPAL REGISTER**

Audacity

MAZZONI, DOMINIC M (UNITED STATES INDIVIDUAL)
2067 MERIDIAN AVE, #5
SOUTH PASADENA, CA 91030

FOR: DOWNLOADABLE COMPUTER SOFTWARE FOR CREATING, RECORDING, EDITING, ANALYZING, AND MIXING DIGITAL AUDIO AND MUSIC, IN CLASS 9 (U.S. CLS. 21, 23, 26, 36 AND 38).

FIRST USE 5-28-2000; IN COMMERCE 5-28-2000.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

SER. NO. 78-352,743, FILED 1-16-2004.

ALICIA COLLINS, EXAMINING ATTORNEY